Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington D. C. 20544

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In the Matter of	)	
	)	
Deregulation/Privatization of Equipment	)	
	)	CC Docket No. 99-216
Registration and Telephone Network	)	
	)	
Connection Rules (47 C.F.R. Part 68)	)	

COMMENTS OF THE TEXAS OFFICE OF PUBLIC UTILITY COUNSEL

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COMMENTS OF THE TEXAS OFFICE OF PUBLIC UTILITY COUNSEL

The Texas Office of the Public Utility Counsel (TOPC) appreciates the opportunity to comment regarding CC Docket No. 99-216 – In the Matter of Deregulation/Privatization of Equipment Registration and Telephone Network Connection Rules (47 C.F.R. Part 68). This initiative by the Federal Communications Commission (FCC) has the potential to greatly influence the performance and reliability of the telephone network.

I. Executive Summary

The telecommunications industry is undeniably in a state of transition and as we move away from regulated markets to competitive ones, the elimination of certain regulations becomes necessary. However, it becomes equally important to create protections against market failure and externalities. Of course, many of the worlds most efficient markets are reliant on regulations. The stock market for example relies heavily on rules and regulations to keep it running efficiently and at optimal performance. Similarly, the telecommunications market will need rules and regulations to insure that it performs to its optimal level. TOPC will concentrate its comments on the issues and questions raised under the umbrella of the second forum.

The FCC has rightly recognized its responsibility to protect the telephone network from harmful CPE or interconnection. Congruently, the Commission recognizes that all participants in the market could benefit if the process of registering equipment and addressing complaints were streamlined and possibly handled by the private sector. However, TOPC is concerned that the market cannot correct or police itself with regard to telephone network harm because the damage done is characterized by market failure. Specifically, TOPC fears that externalities presently exist such that private sector players lack the incentive to police the market and maintain the protection of the telephone network against harmful CPE or interconnection.

Therefore, TOPC does not believe that the private sector can duplicate the function of 47 CFR Part 68. Some governmental oversight is essential. However, a combination of market mechanisms and governmental oversight could be used for safeguarding the industry.

II. Market Failure and Externalities

Markets work at their best when the participants are allocated their appropriate share of profits and costs. When the costs or benefits of any market participant's actions do not accrue to that participant, the market does not function at its optimum level. This misallocation of costs or benefits is often referred to as externalities. A classic case of an externality is pollution. When a factory manufactures a product it emits pollution. This pollution has a cost to the nearby residents in the form of diminished health and a lower standard of living. Unless these costs are reflected in the price of the product, factory output and consumption will not be at optimal levels for society because the harmful byproducts have not been accounted for.

A similar externality exists with regard to harmful CPE or interconnection. Damage to the network causes all users of the network to suffer costs. However, these costs are not necessarily transferred to the manufacturer of the harmful product or those responsible for interconnection. Thus, the responsible party does not have full incentive to avoid harmful CPE or interconnection. The result is market failure. Presently, the FCC requires the registration of equipment, tests for compatibility, and uniform standards for both equipment and installation. Unfortunately, this process is time consuming and requires substantial oversight.

III. Government Oversight

Government oversight is needed to protect the telephone network. The private sector is unable to provide the necessary protections because it does not have the incentive to do so. However, a departure from the present system toward a more market-based approach is possible. A combination of financial penalties, complaint enforcement and uniform standards can be successful.

For example, to address the issue of market failure, a system of bonds and financial penalties could provide manufacturers the incentive to avoid harmful CPE and interconnection. A company wishing to manufacture or distribute a product would be required to certify its safety and post a bond in support of that certification. Of course, the uniform standards would reflect FCC criteria. In the event that the service or product does not meet the performance standards, the bond would be forfeited and the FCC would levy a fine against the company commensurate with the damage caused by the faulty product or service. It will be vital that the FCC possess the necessary staff and technical capability to quantify the extent of resulting system damage.

In addition, a more effective and more public complaint process should be in place. Complaints will call attention to problem areas and manufacturers. It is vital that a governmental entity be the recipient of complaints in order to protect against concealment of problems and to publicize areas of concern and faulty products. Such a system could include public recalls of equipment, posting of complaints on the web, and announcements of poor product performance.

Finally, even though the registration process will not be as extensive, the FCC should set, maintain, and modify minimum industry standards for the protection of the network. Those standards would provide a broad outline of how equipment and services are provided. The standards should instruct manufacturers as to the FCC's expectations with regards to equipment, equipment features and services.

Conclusion

TOPC supports the efforts of the FCC to protect the telephone network from harmful CPE or interconnection. While present regulations may be burdensome and time consuming, they serve a necessary function to protect against market failure. This may not be the most efficient way to address externalities, but alternative safeguards must be developed and put in place before the existing regulations are removed.

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Respectfully submitted,

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